

Zoning Text Amendment No.: 12-11
Concerning: Accessory Apartments –
Amendments
Draft No. & Date: 1-7\17\12
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definitions for one-family dwelling and one-family detached dwelling-unit;
- establish definitions for an attached accessory apartment and a detached accessory apartment to replace the definition for an accessory apartment;
- revise the standards and requirements for a registered living unit;
- establish standards for attached and detached accessory apartments as permitted uses;
- amend the land use table in one-family residential zones and agricultural zones to add attached and detached accessory apartments as a permitted use under certain circumstances; and
- establish special exception standards for attached and detached accessory apartments
- and generally amend all provisions concerning accessory apartments

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION.”
DIVISION 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.”
Adding Section 59-A-6.19	“Attached accessory apartments.”
Adding Section 59-A-6.20	“Detached accessory apartments.”
DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY.”
Section 59-C-1.3	“Standard development.”
Section 59-C-1.5	“Cluster development.”

Section 59-C-1.6	“Development including moderately priced dwelling units.”
DIVISION 59-C-9	“AGRICULTURAL ZONES.”
Sec. 59-C-9.3	“Land uses.”
Sec. 59-C-9.4	“Development standards.”
DIVISION 59-G-2.	“SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.”
Sec. 59-G-2.00.	“Accessory apartment.”
Adding Sec. 59-G-2.00.6	“Attached accessory apartment.”
Adding Sec. 59-G-2.00.7	“Detached accessory apartment.”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

* * *

59-A-2.1. Definitions.

* * *

[Accessory apartment: A second dwelling unit that is part of an existing one-family detached dwelling, or is located in a separate existing accessory structure on the same lot as the main dwelling, with provision within the accessory apartment for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to the main dwelling.]

Accessory apartment, attached: A second dwelling unit that is part of a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. An attached accessory apartment has a separate entrance and is subordinate to the principal dwelling.

Accessory apartment, detached: A second dwelling unit that is located in a separate accessory structure on the same lot as a one-family detached dwelling and provides for cooking, eating, sanitation, and sleeping. A detached accessory apartment is subordinate to the principal dwelling.

* * *

Dwelling and dwelling units:

Dwelling: A building or portion thereof arranged or designed to contain one or more dwelling units.

* * *

Dwelling, one-family: A dwelling containing not more than one dwelling unit. An accessory apartment[, if approved by special exception,] or a registered living unit may also be part of a one-family dwelling. A one-

family dwelling with either of these subordinate uses is not a two-family dwelling[,] as defined in this section.

* * *

Dwelling unit: A building or portion [thereof] of a building providing complete living facilities for not more than one family, including, at a minimum, facilities for cooking, sanitation, and sleeping.

Dwelling unit, one-family detached: A dwelling unit that is separated and detached from any other dwelling unit on all sides, except where the dwelling is modified to include an accessory apartment[, approved by special exception,] or a registered living unit.

* * *

Sec. 2. DIVISION 59-A-6 is amended as follows:

DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

* * *

59-A-6.10. Registered living unit--Standards and requirements.

A registered living unit, permitted in[,] agricultural, one-family residential, and planned unit development zones[,] must:

* * *

- (i) be removed whenever it is no longer occupied as a registered living unit, unless the owner applies for and is granted either a special exception or a license for an attached accessory apartment [in accordance with Section 59-G-2.00] under Section 59-G-2.00.6 or Section 59-A-6.19, or whenever the one-family detached dwelling unit in which it is located is no longer occupied by the owner.

* * *

Sec. 59-A-6.19 Attached accessory apartment.

(a) Where an attached accessory apartment is permitted in a zone, only one accessory apartment is permitted for each lot and it is only permitted under the following standards:

- (1) the apartment was approved as a special exception before {EFFECTIVE DATE} and satisfies the conditions of the special exception approval; or
- (2) the apartment is registered with the Department of Housing and Community Affairs in the same manner as a registered living unit under Subsection 59-A-6.10(a)(3); and
 - (A) the owner of the lot occupies a dwelling unit on the lot at least 6 months of every calendar year;
 - (B) the apartment has the same street address as the principal dwelling;
 - (C) a separate entrance is located on the side yard or rear yard;
 - (D) one on-site parking space is provided in addition to any required on-site parking for the principal dwelling;
 - (E) in the RE-2, RE-2C, RE-1, R-200, RMH-200, and R-150 zones, the attached accessory apartment is located at least 500 feet from any other attached or detached accessory apartment, measured in a straight line from side lot line to side lot line along the same block face;
 - (F) in the R-90, R-60, and RNC zones, the attached accessory apartment is located at least 300 feet from any other attached accessory apartment, measured in a straight line from side lot line to side lot line along the same block face;

(G) the rear lot line of the lot with the accessory apartment does not
abut a lot with another accessory apartment;

(H) if the accessory apartment is limited to a floor area of 800
square feet, it must be no greater than 50% of the principal
dwelling or 800 square feet, whichever is less;

(I) if the accessory apartment is limited to a floor area of 1,200
square feet, it must be no larger than 50% of the principal
dwelling or 1,200 square feet, whichever is less; and

(J) the maximum number of occupants is limited to 3 persons.

(3) The accessory apartment must not be located on a lot where any of the
following otherwise allowed residential uses exist: guest room for
rent; boardinghouse; registered living unit; or any other rental
residential use, other than an accessory dwelling in an agricultural
zone.

(b) (1) An attached accessory apartment special exception petition may be
filed with the Board of Appeals to deviate from any permitted use
standard regarding:

(A) location of the separate entrance;

(B) number of on-site parking spaces; or

(C) minimum distance from any other attached or detached
accessory apartment.

(2) To approve a special exception filed under Subsection (b)(1), the
Board of Appeals must find, as applicable, that:

(A) the separate entrance is located so that the appearance of a
single-family dwelling is preserved;

(B) adequate on-street parking permits fewer off-street spaces; or

(C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

Sec. 59-A-6.20 Detached accessory apartment.

(a) Where a detached accessory apartment is permitted in a zone: it must be located on a lot one acre or greater in size; only one accessory apartment is permitted for each lot; and it is only permitted under the following standards:

- (1) the accessory apartment was approved as a special exception before {EFFECTIVE DATE} and satisfies the conditions of the special exception approval; or
- (2) the accessory apartment is registered with the Department of Housing and Community Affairs in the same manner as a registered living unit under Subsection 59-A-6.10(a)(3); and
 - (A) the owner of the lot occupies a dwelling unit on the lot at least 6 months of every calendar year;
 - (B) the apartment has the same street address as the principal dwelling;
 - (C) a separate entrance is located on the side yard or rear yard;
 - (D) one on-site parking space is provided in addition to any required on-site parking for the principal dwelling;
 - (E) in the RE-2, RE-2C, and RE-1 zones, the detached accessory apartment is located a minimum distance of 500 feet from any other attached or detached accessory apartment, measured in a

straight line from side property line to side property along the same block face;

(F) the rear lot line of the lot with the accessory apartment does not abut a lot with another accessory apartment;

(G) if the accessory apartment is limited to a floor area of 800 square feet, it must be no greater than 50% of the principal dwelling or 800 square feet, whichever is less;

(H) if the accessory apartment is limited to a floor area of 1,200 square feet, it must be no greater than 50% of the principal dwelling or 1,200 square feet, whichever is less;

(I) the maximum number of occupants is limited to 3 persons; and

(J) any structure built after {EFFECTIVE DATE} to be occupied as an accessory apartment must have the same minimum side yard setback requirement as the principal dwelling and a minimum rear yard setback requirement of 12 feet, unless more restrictive accessory building or structure yard setback standards are required under Section 59-C-1.326.

(3) The accessory apartment must not be located on a lot where any of the following otherwise allowed residential uses exist: guest room for rent; boardinghouse; registered living unit; or any other rental residential use, other than an accessory dwelling in an agricultural zone.

(b) (1) A detached accessory apartment special exception petition may be filed with the Board of Appeals to deviate from any permitted use standard regarding:

(A) location of the separate entrance;

(B) number of on-site parking spaces; or

(C) minimum distance from any other attached or detached accessory apartment.

(2) To approve a special exception filed under Subsection (b)(1), the Board of Appeals must find, as applicable, that:

(A) the separate entrance is located so that the appearance of a single-family dwelling is preserved;

(B) adequate on-street parking permits fewer off-street spaces; or

(C) when considered in combination with other existing or approved accessory apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use.

* * *

Sec. 3. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

Sec. 59-C-1.3. Standard development.

The procedure for approval is specified in Chapter 50.

59-C-1.31. Land uses.

No use is allowed except as indicated in the following table:

-Permitted Uses. Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

-Special Exception Uses. Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
(a) Residential										
[Accessory apartment. ⁴]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]			[SE]
<u>Accessory apartment, attached (up to 800 square feet).</u> ⁴	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>			<u>P*/SE***</u>
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ⁴	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>P*/SE***</u>	<u>SE***</u>	<u>SE***</u>			<u>P*/SE***</u>
<u>Accessory apartment, detached (up to 800 square feet).</u> ⁴	<u>P**/SE****</u>	<u>P**/SE****</u>	<u>P**/SE****</u>							
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ⁴	<u>P**/SE****</u>	<u>P**/SE****</u>	<u>P**/SE****</u>							

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184 ⁴ Not permitted in a mobile home.

185 * See Sec. 59-A-6.19. Attached accessory apartment.

186 ** See Sec. 59-A-6.20. Detached accessory apartment.

187 *** See Sec. 59-G-2.00.6. Attached accessory apartment.

188 **** See Sec. 59-G-2.00.7. Detached accessory apartment.

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Sec. 59-C-1.5. Cluster development.

* * *

59-C-1.53. Development standards.

All requirements of the standard method of development in the respective zones, as specified in Section 59-C-1.3, apply, except as expressly modified in this section.

	RE-2C	RE-1	R-200	R-150	R-90	R-60	RMH 200
59-C-1.531. Uses Permitted. No uses shall be permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31</u> .							
* * *							
[Accessory apartment. ²]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]
<u>Accessory apartment, attached (up to 800 square feet).</u> ²	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ²	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>
<u>Accessory apartment, detached (up to 800 square feet).</u> ²	<u>P***/SE****</u>	<u>P***/SE****</u>					
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ²	<u>P***/SE****</u>	<u>P***/SE****</u>					

* * *

² Not permitted in a townhouse, one-family attached dwelling unit, or mobile home.

199 ^{*} See Sec. 59-A-6.19. Attached accessory apartment.

200 ^{**} See Sec. 59-G-2.00.6. Attached accessory apartment.

201 ^{***} See Sec. 59-A-6.20. Detached accessory apartment.

202 ^{****} See Sec. 59-G-2.00.7. Detached accessory apartment.

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204 **Sec. 59-C-1.6. Development including moderately priced dwelling units.**

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206 **59-C-1.62. Development standards.**

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	RE-2C ⁸	RE-1 ⁸	R-200	R-150	R-90	R-60	R-40
59-C-1.621. Uses Permitted. No uses are permitted except as indicated by the letter "P" in the following schedule. Special exceptions may be authorized as indicated in [section] <u>Section 59-C-1.31</u> , [title "Land Uses,"] subject to [the provisions of article] <u>Article 59-G</u> .							
* * *							
Registered living unit. ^{3,5}	P	P	P	P	P	P	
[Accessory apartment. ³]	[SE]	[SE]	[SE]	[SE]	[SE]	[SE]	
<u>Accessory apartment, attached (up to 800 square feet).</u> ³	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ³	<u>P*/SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	<u>SE**</u>	
<u>Accessory apartment, detached (up to 800 square feet).</u> ³	<u>P***/SE****</u>	<u>P***/SE****</u>					
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ³	<u>P***/SE****</u>	<u>P***/SE****</u>					

208 * * *

209 ³ Not permitted in a townhouse, one-family attached dwelling unit, or mobile
210 home.

211 * See Sec. 59-A-6.19. Attached accessory apartment.

212 ** See Sec. 59-G-2.00.6. Attached accessory apartment.

213 *** See Sec. 59-A-6.20. Detached accessory apartment.

214 ^{****} See Sec. 59-G-2.00.7. Detached accessory apartment.

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216 **Sec. 4. DIVISION 59-C-9 is amended as follows:**

217 DIVISION 59-C-9. AGRICULTURAL ZONES.

218 * * *

219 **Sec. 59-C-9.3. Land uses.**

220 No use is allowed except as indicated in the following table:

221 — **Permitted uses.** Uses designated by the letter “P” are permitted on any lot in
222 the zones indicated, subject to all applicable regulations.

223 — **Special exception uses.** Uses designated by the letters “SE” may be authorized
224 as special exceptions under [Article 59-G](#).

225

	Rural	RC	LDRC	RDT	RS	RNC	RNC/ TDR
* * *							
(e) Residential: ²							
[Accessory apartment. ^{6,7}]	[SE]	[SE]	[SE]	[SE ⁴⁸]		[SE]	[SE]
Accessory dwelling. ⁷	SE	SE	SE	SE ⁴⁸	SE	SE	SE
Accessory dwelling for agricultural workers. ⁴²				P			
<u>Accessory apartment, attached (up to 800 square feet).</u> ^{6,7}	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P^{48,*}/SE^{48,**}</u>		<u>P*/SE**</u>	
<u>Accessory apartment, attached (greater than 800 square feet, up to 1,200 square feet).</u> ^{6,7}	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P*/SE**</u>	<u>P^{48,*}/SE^{48,**}</u>		<u>SE**</u>	
<u>Accessory apartment, detached (up to 800 square feet).</u> ^{6,7}	<u>SE***</u>	<u>SE***</u>	<u>SE***</u>	<u>SE^{48,***}</u>			
<u>Accessory apartment, detached (greater than 800 square feet, up to 1,200 square feet).</u> ^{6,7}	<u>SE***</u>	<u>SE***</u>	<u>SE***</u>	<u>SE^{48,***}</u>			

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⁶ Not permitted in a mobile home.

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⁷ [As a special exception regulated by divisions 59-G-1 and 59-G-2, such a] An

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accessory dwelling unit, including an attached or detached accessory apartment, is

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excluded from the density calculations [set forth] in [sections] Sections 59-C-9.41[,

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title "Density in RDT Zone,"] and 59-C-9.6[, title "Transfer of Density-Option in

232

RDT Zone."]. Once the property is subdivided, such a dwelling would no longer

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comply with [the special exception regulations or with] this exclusion. A special

exception is not required for a dwelling that was a farm tenant dwelling in existence [prior to] before June 1, 1958[, provided, that] if the dwelling meets all applicable health and safety regulations.

* * *

⁴⁸ If property is encumbered by a recorded transfer of developments rights easement, this use is prohibited. However, any building existing on October 2, 2007 may be repaired or reconstructed if the floor area of the building is not increased and the use is not changed.

* * *

^{*} See Sec. 59-A-6.19. Attached accessory apartment.

^{**} See Sec. 59-G-2.00.6. Attached accessory apartment.

^{***} See Sec. 59-G-2.00.7. Detached accessory apartment.

* * *

Sec. 59-C-9.4. Development standards.

* * *

59-C-9.41. Density in RDT zone.

Only one one-family dwelling unit per 25 acres is permitted. (See [section] Section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home₂ or guest house₂ as defined in [section] Section 59-A-2.1[, title "Definitions."].
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2 and Sections 59-A-6.19 and 59-A-6.20.

* * *

Sec. 5. DIVISION 59-G-2 is amended as follows:

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND
REQUIREMENTS.

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

USE	SECTION
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* * *

Accessory apartment	G-2.00
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<u>Accessory apartment, attached</u>	<u>G-2.00.6</u>
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<u>Accessory apartment, detached</u>	<u>G-2.00.7</u>
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* * *

Sec. 59-G-2.00. Accessory apartment. (The standards below reflect the conditions required only for an accessory apartment approved before {EFFECTIVE DATE}.)

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

* * *

Sec. 59-G-2.00.6 Attached accessory apartment.

A special exception may be granted for an attached accessory apartment on the same lot as an existing one-family detached dwelling, subject to the special exception provisions of Division 59-G-1 and the standards and requirements of Section 59-A-6.19.

Sec. 59-G-2.00.7. Detached accessory apartment.

Where a detached accessory apartment is permitted in a zone, only one detached accessory unit is permitted for each lot and it is only permitted under the special exception provisions of Division 59-G-1 and the standards and requirements of Section 59-A-6.20.

Sec. 6. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

Sec. 7. Sunset. Sections 1-5 of ZTA 12-11 shall cease to be effective after the 2,000th accessory apartment is registered with the Department of Housing and Community Affairs.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council